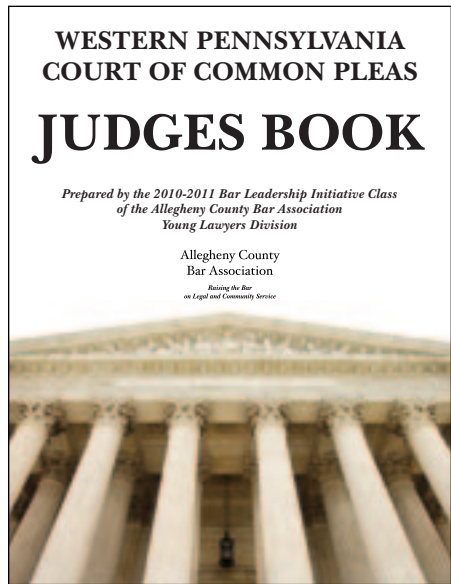


LAWYERS JOURNAL

Bar Leadership Initiative class creates judges book



by Tracy Carbasho

A valuable resource intended to help young lawyers become familiar with the practices and procedures of local judges will be available February 29.

The 2010-2011 Bar Leadership Initiative class, coordinated by Marla Presley, decided to compile information and complete a book about judges as its service project. The idea for the book originally came from ACBA Executive Director David Blaner and Presley said the class immediately recognized that the project could be a tremendous benefit to the legal community.

"While Allegheny and the surrounding counties do have local rules, the judges book contains certain practices and procedures specific to the individual

judges," said Presley, a litigation attorney at Babst, Calland, Clements & Zomnir. "The book will assist young lawyers in becoming more comfortable in the courtroom and more familiar with court procedure. Most judges were more than happy to participate in the project and many provided helpful tips that young lawyers otherwise would not know."

The 243-page publication, entitled "Western Pennsylvania Court of Common Pleas Judges Book," will be released February 29 at a Young Lawyers Division event. The free book will then be available online at www.acba.org.

Fifteen individuals participated in this particular BLI class, while Presley served as the professor or coordinator. According to the YLD's bylaws, the immediate past chair of the Division

serves as the BLI coordinator.

The BLI was created by the YLD to help make attorneys aware of the many opportunities that are available through the ACBA. Members are selected each year by the YLD Council to participate in the 10-month BLI program. Every BLI class selects a project that will benefit the local legal community and the community at large.

Attorneys who took part in the 2010-2011 class and played a role in the completion of the book were Jennifer Arnette, Danielle Barozzini, Samantha Clancy, Matthew Dewey, Branden Fulciniti, Kathryn Harrison, Nikki Velisaris Lykos, Shawn McClure, Angel Revelant, Danielle Salsi, Justin Stitt, Brienne Terril,

Continued on page 2

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Members of the ACBA Civil Litigation Section served Christmas lunch to the public at Smithfield United church on Thursday, Dec. 15, 2011. Volunteers included (left to right) Mary Kate Coleman, Amy Coco, Austin Henry, Judge Terry O'Brien, and Joanna Serago.

LAWYERS JOURNAL

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JUDGES BOOK

continued from front cover

Joseph Williams, Peter Wolff, and Samuel Yamron. The class goal was to bridge the gap between the bench and the bar in Allegheny and the surrounding counties.

"Every BLI member had a role in preparing the judges book, but Joe Williams was responsible for coordinating the final product," said Presley. "It certainly would not have been finished without his dedication. Overall, this was a tremendous undertaking and I am very proud of each class member and the final product."

Williams, an associate at Pollock Begg Komar Glasser & Vertz, said he agreed to help finalize the book since it was not completed when the BLI program ended in June. He believes the book will be a good reference tool for lawyers, paralegals, legal assistants, and law students.

"The book was a good project because it creates a resource for local attorneys to reference when they need more information about the operating procedures of a judge or the judge's preference with regard to a particular

matter," he said. "Our objective was to create an easy-to-follow outline of the judges' backgrounds, procedures, preferences, and more. The book includes not only courtroom procedures and policies, but also the educational and employment background for each judge, contact information for chambers, and words of wisdom from the judges."

Williams said the project took about 15 months to complete with the final work being done in December. The book was published by the BLI class in conjunction with the ACBA's graphics department.

The work consisted of drafting a uniform survey, distributing the questionnaires to all judges in western Pennsylvania, compiling the judges' responses, and formatting the book.

Presley and Williams thanked all of the judges who responded to the surveys. In addition, the BLI class appreciates the hard work of the judges' secretaries, tip staff, and law clerks, as well as the ACBA's graphics department.

The first judges book was completed by the YLD in 1997 when a committee of 47 lawyers surveyed judges in each division of the Allegheny County

Court of Common Pleas. The 2010-2011 BLI class thought it was time for an updated publication.

The surveys that were sent to the judges requested biographical information and details regarding motions practice, conferences, and conciliations.

A few examples of the questions that are answered by judges in the book include:

Do you require or request courtesy copies of motions filed with the court to be provided to chambers?

Do you have any specific requirements outside of the applicable Rules of Procedure regarding the scheduling of oral arguments on a motion?

Do you impose time constraints on oral arguments on motions?

How many days notice must be given to the opposing attorney or party prior to presentation?

Do you place motions arguments on the record?

When do you require an evidentiary hearing to be held?

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Significant changes in U.S. patent law

by Barry I. Friedman, Esq.

On Sept. 16, 2011, President Obama signed into law the Leahy Smith America Invents Act, which ushers in the most sweeping changes to United States patent law in over 50 years. This Act, more commonly known as the AIA, presents many challenges to individuals and businesses seeking to protect their intellectual property rights. Portions of the AIA were effective immediately, while others will go into effect in September 2012 and March 2013. This article seeks to summarize the most relevant changes presented by the AIA, as well as identify areas of uncertainty arising from both the new law and the delayed implementation of some of its provisions.

Each section of this article presents both the current statutory provisions and the AIA changes to the law. In reviewing the analysis, inventors (which include owners of patentable technology) should be considering the new approaches discussed, relating to timing and evaluation of protection of their intellectual assets.

Changes in patentability standards and timing

These provisions are effective beginning March 16, 2013

Background

Invention priority, i.e., the specific time recognized as the creation of the invention, is utilized in two significant ways: (i) as part of a patentability analysis and (ii) awarding a patent in the event that there are competing claims to a common invention.

In determining patentability, an inventive concept is compared to the "prior art," which is the universe of existing, relevant technical knowledge. The relevant prior art for each invention is defined, from a time perspective, by the date of invention priority. Inventions are patentable if they are novel and nonobvious when compared to the relevant prior art.

First to File

The most significant change resulting from the AIA is that it converts United States from a "first to invent" to a "first to file" system. The time of invention will be measured solely by the filing of a patent application with a designated patent office.

Prior United States law

Invention priority is measured from the date of conception of the inventive concept. An inventor who documented such a date of conception and diligently converted the concept to a working embodiment, or filed a

patent application covering the concept, was entitled to reach back to the conception date as a critical priority date for comparison to the prior art and competing ownership claims by third parties.

The AIA

In an effort to harmonize United States law with the majority of foreign countries' definition of priority, the United States now has adopted a new standard, which states that priority of invention is measured solely from the filing of a patent application, with respect to both patentability and competing claims of ownership.

Analysis

The impact of this change is that inventive entities must be much more diligent in evaluating developing technologies for patentability and filing appropriate applications. Determinations that technologies are proprietary and worthy of patent must be made much earlier in the product development life cycle, potentially long before customer demand or feedback may be evaluated or obtained, as will be more fully discussed below with respect to restricted pre-filing commercial activities.

New limits on pre-filing commercial activities

All pre-filing sales activity, including sales and offers for sale, will now bar patentability.

Background

Commercial activity, such as sales and offers for sale of a product or service embodying an inventive concept, places that concept within the prior art.

Prior United States Law

Sales and offers for sale during a one year grace period prior to filing of a patent application were specifically excluded from the prior art.

The AIA

Dispenses with this grace period with respect to sales and offers for sale, again harmonizing United States law with other countries. No such commercial activity is permitted prior to filing of a patent application and will constitute an absolute bar to patentability.

Analysis

The impact of this change is only significant if no foreign filing of the patent applications is contemplated. Even under prior United States law, any party desiring foreign coverage was already in the practice of filing an application prior to any such sales activity. However, for those interested only in United States patent coverage, this change will require, as suggested

above, much earlier consideration of patentability and filing of appropriate patent applications prior to any contemplated sales activity.

Discussions with customers, potential customers, and market research must be careful to eliminate any suggestion of price and commercial sales terms. The use of nondisclosure agreements will not be effective to cure any improper sales or offers for sale.

Certain disclosures by the inventor entity will be excluded from the prior art

Public disclosures of an inventive concept will not be considered prior art, and therefore a bar to patentability, if made by the inventor within one year prior to filing.

Prior United States Law

A disclosure to the public of an inventive concept during the period one year prior to filing of a patent application was excluded from the prior art, similar to sales activity described above. The disclosure could take the form of a public use or a description in a printed publication.

The AIA

The new statute preserves this one year grace period protection, with some expansion of the exception. Disclosures of the inventive concept by the inventor, or any third party receiving the information from the inventor, within one year prior to the filing of a patent application, will be considered an exception and not be considered prior art.

Analysis

This change preserves the ability of the inventor to disclose the invention to others outside of the inventive entity (for one year) and still preserve relevant patent rights. It is to be noted, however, that, similar to prior United States practice, such disclosure will still negate foreign filing rights. This provision is limited to the inventor and those receiving the disclosure directly from the inventor. This raises the strategic possibility of intentional "defensive publications" to block third party patent claims to the invention concepts. This disclosure, by the inventor, would be considered prior art for any third party filing an application on similar subject matter as of the date of publication, but not for the inventor. Such a disclosure could be made as early as one year prior to the filing of a patent application, for inventors not concerned about foreign patent rights. For others, the disclosure could be made after the filing of a patent application. Additionally, the term "disclosure" is undefined in the statute. It is likely that some subsequent clarification will be required by Congress or the courts to refine the scope of this term.

Challenges to patents and applications as a derivation

Effective March 16, 2013

The owner of a patent or application may challenge an earlier patent or

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Further update on NLRB Notification of Employee Rights

by Maria Greco Danaher

As most employers now are aware, on Aug. 25, 2011, the National Labor Relations Board (NLRB) announced its final rule related to the Notification of Employee Rights under the National Labor Relations Act (NLRA). Under that rule, private-sector employers whose workplaces fall under NLRA jurisdiction will be required to post a notice of employee rights regarding unionization. The final rule requires employers to post and maintain the NLRB notice in conspicuous places, and to take "reasonable steps" to ensure that the notices are not altered, defaced, or covered by any other material, or otherwise rendered unreadable. The proposed rule has been pending since December of 2010,

and was to have taken effect on Nov. 14, 2011, at which time employers would have been required to post written notices consistent with the rule. However, in October 2011, the NLRB announced its decision to postpone the implementation date for the notice until Jan. 31, 2012. Since that time, the legal challenges to the rule having continued. The federal judge hearing arguments on the matter in Washington, D.C. last month told the board attorneys that either the effective date would have to be further extended, or she would enjoin the NLRB from implementing it, as she needed more time to consider the briefs and oral arguments presented by both sides in the case.

On Dec. 23, 2011, the NLRB agreed to postpone the effective date of the

notice-posting to April 30, 2012. The Board stated that postponing the effective date of the rule would facilitate the resolution of the legal challenges that have been filed with respect to the rule.

Employers who fail to post the notice after the new deadline (April 30) may be subject to sanctions for an unfair labor practice under the NLRA, and in any event in which notice has not been posted, the Board may extend the six-month statute of limitations for filing a charge involving other unfair labor practice (ULP) allegations against the employer. This means that an employer's failure to post the required notice may extend the time within which employees may file ULP charges against that employer. Further, if an employer knowingly and

willfully fails to post the notice, the failure also may be considered evidence of unlawful motive in any unfair labor practice case involving other alleged violations of the NLRA, meaning that the failure to post could inadvertently provide adverse evidence in an unrelated ULP matter.

Proposed notice language can be found on the NLRB's website, along with an information sheet that summarizes the provisions of the 194 page rule, and a link to the preamble that summarizes the provisions of the final rule. Employers should also know that along with the obligation to post the rule will come the right to post a notice to employees of their right to choose not to unionize; however, wording of such a notice should be discussed and cleared with legal counsel prior to posting it. ■

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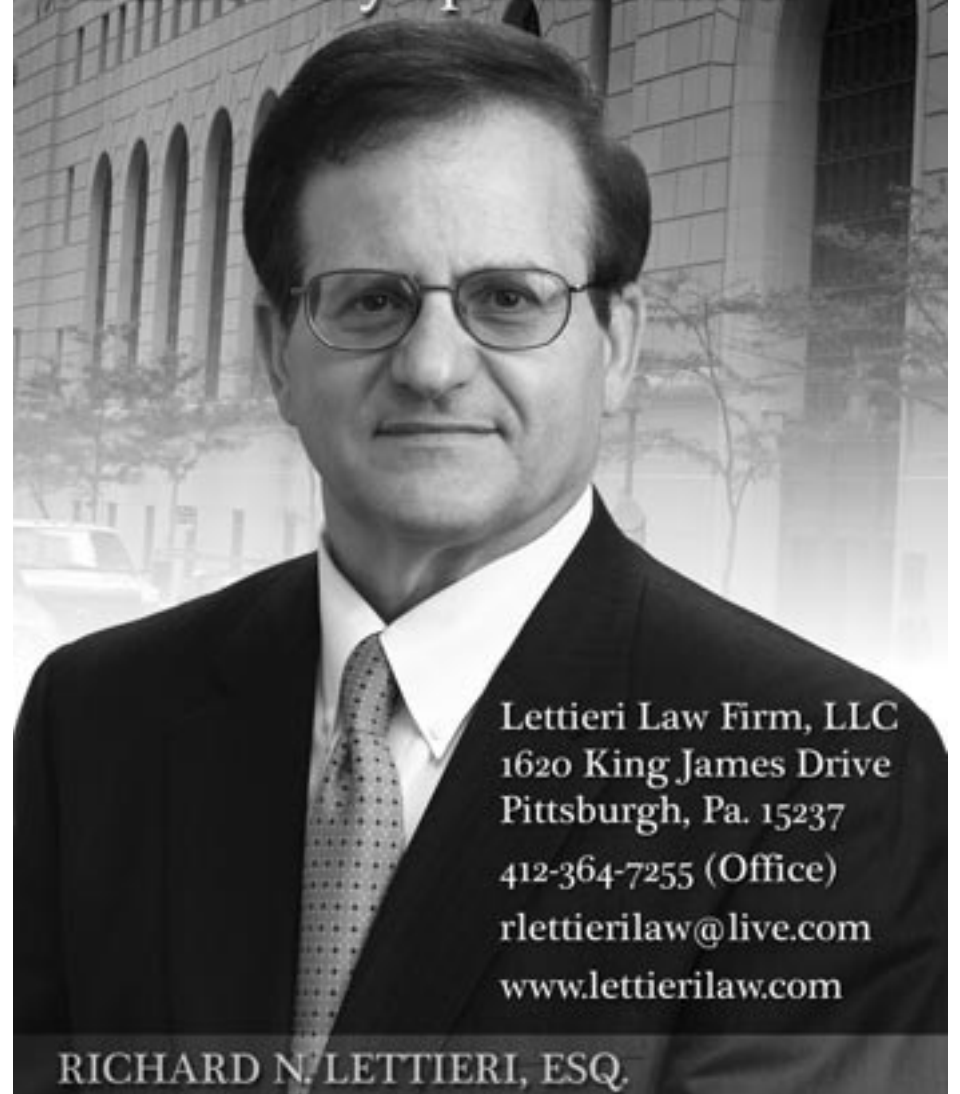
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Invalid FMLA certification can form employment termination basis

by Maria Greco Danaher

In order to support a valid claim of retaliation under the Family and Medical Leave Act (FMLA), an employee must demonstrate that the reason given for an adverse employment action was pretextual, and that the employee's request for or use of FMLA leave was the actual basis of the action. The Sixth U.S. Circuit Court of Appeals has held that an employer's rejection of an invalid FMLA certification was a valid reason for termination, and that the employee's inability to proffer evidence of an alternate explanation for the company's actions led to the dismissal of her lawsuit. *Coffman v. Ford Motor Company*, Sixth Cir., No. 10-3842, unpublished opinion, Nov. 22, 2011.

The FMLA entitles eligible employees to twelve weeks of unpaid leave each year for, among other things, a "serious health condition" that precludes the employee from performing his/her job. Employers are prohibited from discriminating or retaliating against an employee who exercises his/her FMLA rights. In order to succeed on a claim of retaliation under the FMLA, an employee must first present a prima facie case that includes his/her eligibility for FMLA leave, the fact that he/she took the leave, and the fact that an adverse action was taken against him/her. The burden then shifts to the employer to provide a

legitimate business reason for its action. Once that is done, the employee cannot succeed on a retaliation claim unless he/she can prove that the proffered reason is actually a pretext. To establish pretext, the employee must either show that the proffered reason had no factual basis, that the given reason did not actually motivate the action, or that such reason was insufficient to warrant the action.

Jami Coffman began working for Ford Motor Company in July 1999. In 2004, she had frequent absences, which she attributed to health issues. Although she provided medical documentation for many of those absences, she failed to provide valid and timely information for ten periods of absence within an eight month period. Those ten occurrences led Coffman into the company's disciplinary process, established under a collective bargaining agreement, resulting in her termination. That termination occurred shortly after Coffman had been diagnosed with sleep apnea. Coffman then sued Ford, claiming that her termination was the result of her request for FMLA leave. The district court granted summary judgment in favor of the company, and the Sixth Circuit upheld that decision, holding that Coffman fell short of demonstrating that Ford's reason for the termination was pretext for FMLA retaliation.

Under the company's written policies, employees requesting FMLA

leave would receive documents to be completed by a physician within 15 days. The policy specifically pointed out that incomplete certification could cause absences to be viewed as "absence without leave," which could lead to discipline up to termination.

Coffman submitted paperwork that consisted of two forms that provided two divergent diagnoses for the absences, and neither included supporting information. Further, the signatures on the documents differed markedly from signatures of the same doctors on medical documentation previously submitted by Coffman. Faced with the contradictory, questionable certifications, Ford sought clarification by asking Coffman to request medical records to support the certifications. In response, Coffman's doctor provided a single document that included only a list of medications. Rather than supporting the initial certification, this information simply created new contradictions. Ford took no further action, and viewed the absences as unexcused, which ultimately led to Coffman's termination and her subsequent lawsuit.

In spite of Coffman's argument that Ford improperly classified her as AWOL, the Sixth Circuit found that although FMLA certifications that contain all required information are presumptively valid, an employer can rebut that presumption by demonstrating that the certification is invalid,

contradictory, or of an otherwise suspicious nature. Here, the certifications submitted were medically contradictory and the inconsistent signatures created suspicion. To its credit, the company took the additional step of asking for further information in an attempt to clarify the contradictory nature of those certifications. However, that supplemental information actually increased the confusion, supporting the company's decision to deny FMLA leave for the absences.

Employers cannot avoid liability under the FMLA simply by arbitrarily labeling an employee's certification as "invalid." Incomplete FMLA certifications are distinguishable from invalid ones. When a certification is incomplete, that is, it does not provide sufficient information to justify FMLA leave, an employee must be provided with a reasonable opportunity to cure any alleged deficiency. The regulations that support the FMLA make it clear that employers must work to clarify certifications offered by employees, and can do so by asking for a second opinion from a different provider (at the employer's expense), or get permission from the employee to clarify or authenticate questionable certification with the healthcare provider. It is in the best interest of both employers and employees to use these discretionary measures to avoid disputes that could lead to disruptive and expensive lawsuits. ■



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Control of juvenile cases returned to Luzerne Court

by Art Heinz

The Supreme Court of Pennsylvania has announced that Senior Judge Arthur E. Grim has completed his service as court-appointed Special Master in charge of reviewing juvenile court adjudications in Luzerne County under former Judge Mark A. Ciavarella. A Supreme Court Order was issued returning control of all juvenile court functions to the Luzerne County Court of Common Pleas and is posted on the Pennsylvania Judiciary's website at www.pacourts.us.

Judge Grim was appointed by the Supreme Court in February 2009 to review thousands of juvenile cases appearing before former Judge Ciavarella and in October 2010 was further tasked with administering the statutorily-created juvenile crime victim compensation fund.

As a result of Judge Grim's review, a total of 2,251 juveniles have had their records expunged and \$65,000 in restitution has been provided to 110 victims of juvenile crime. Original reports claimed that upwards of 6,000 juveniles were adjudicated by former Judge Ciavarella but that number was based on speculation, although some

of the 2,251 juveniles had multiple cases expunged.

Judge Grim previously filed his final report as Special Master outlining the actions he undertook in his review of every juvenile case handled by former Judge Ciavarella and recommended further action by the three branches of government that would prevent the situation that occurred in Luzerne County from occurring elsewhere in Pennsylvania. Several recommendations involved opening all juvenile court proceedings to the public and strengthening the role of the Juvenile Court Judges Commission and the oversight role of the Department of Public Welfare.

"All Pennsylvanians owe Judge Grim a debt of gratitude for helping coordinate unprecedented cooperation among all three branches of state government in bringing about a fair resolution to a miscarriage of justice that affected so many juveniles, their families and the community at large," said Chief Justice of Pennsylvania Ronald D. Castille. "I thank him—on behalf of the entire court—for his service, dedication, and professionalism."

Judge Grim described the situation in Luzerne County under Judges

Michael T. Conahan and Mark A. Ciavarella as "a judicial process [that] had run amok and in essence was governed by the wanton exercise of power, dominated by greed, and with little or no concern for the welfare of juveniles and with little or no adherence to the time-honored precepts of juvenile justice."

Former Judge Ciavarella has since been convicted of racketeering and income tax evasion and was sentenced

to 27 and a half years in federal prison. Former Judge Conahan pled guilty and is serving a 17-and-a-half-year term in federal prison.

In March 2010, Chief Justice Castille issued a progress report on changes made by the Pennsylvania Supreme Court as a result of recommendations by the Interbranch Commission on Juvenile Justice. An update on that progress report will be issued in the coming months. ■

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U.S. PATENT LAW
continued from page 3

application as being improperly derived from its inventive concept.

Prior United States Law

An interference is a procedure to resolve competing claims to the same invention. An evaluation would be made as to the priority of each inventor's claim and the patent would be awarded to the earliest claim of priority. Claims that one party derived the invention improperly from the other, i.e., did not independently invent, would also be considered as part of the evidence and analysis.

The AIA

The new statute dispenses with priority based upon conception and relies solely on the date of filing of the relevant applications to evaluate competing claims. No independent evidentiary evaluation is therefore necessary to make this determination. It preserves, however, the ability of patent owners and applicants to charge that an earlier filed competing patent or application constitutes an unfair derivation of their inventive concept.

The statute sets time limits for such actions. Claims between competing patents are resolved in a civil action and the complaint must be filed within one year of the issuance of the challenger's patent. Claims between an application and a patent or other application will be resolved by the United States Patent and Trademark Office and a Petition must be filed within one year of the publication of the challenger's application.

With respect to proceedings before the United States Patent and Trademark Office, the parties may settle the matter privately, but the settlement agreement must be approved by the Office and may not be contrary to the evidence presented to date.

Prior commercial use defense to claims of infringement

Effective with respect to patents issuing after Sept. 16, 2011

Prior commercial use of an inventive concept, upon a showing of clear and convincing evidence, will be a complete defense to a charge of patent infringement.

Background

In many situations, a patent is asserted against a defendant that has been engaging in certain commercial activity for a period of time prior to the issuance of the patent in suit. In many instances, the accused commercial activity extends prior to the filing of the patent application which matured into the patent in suit.

Prior United States Law

Evidence of pre-existing commercial activity may be used for the purpose of invalidating the patent in suit, i.e., showing that the patent's claimed invention was not new or was obvious. The activity itself is not necessarily considered conclusive evidence that infringement did not occur or that the patent in suit is invalid.

The AIA

The new statute establishes a new specific defense to patent infringement, which permits a defendant to show, by clear and convincing evidence, that the accused commercial activity was in place more than one year prior to the relevant filing date of the patent in suit or any defensive publications made by the inventor (see above for discussion of defensive publications). Such a showing will negate infringement, even if insufficient to invalidate the patent in suit.

One additional requirement is that the use of the accused pre-existing commercial activity must be continuous, i.e., that the defendant has not abandoned the activity at any time in the past. The term "abandoned" is not defined by the statute and is likely to require some interpretation in the future.

Analysis

This defense is transferrable and/or assignable under the very limited conditions of: an assignment

or transfer, for other reasons, of the entire enterprise or line of business to which the defense relates. Furthermore, the defense, so acquired by a purchaser of the entire enterprise and/or line of business, may only raise the defense as to the uses and sites which predated the assignment or transfer. This means that a purchaser may not "buy" the defense to extend to other plants or commercial activities which were not part of the acquisition.

In practice, there are a number of issues raised by this assignability/transferability provision. Some clarification is likely to be necessary with regard to the interpretation, meaning and limits of the terms "for other reasons," "the entire enterprise" and "line of business." In the event of an asset purchase which is less than the entire company of the seller, e.g., a business or product line, it remains to be seen whether the defense is freely assignable at the discretion of the parties or some other minimum sales requirements are necessary.

Reviews and challenges to patents and patent applications: inter partes review and post grant review

Effective Sept. 16, 2012

Adversarial proceedings are available for third parties to challenge a patent on the basis that the patent was improperly granted.

Prior United States Law

A third party may request and participate in a reexamination of a patent as part of an adversarial process known as inter partes reexamination. A third party will be discretionarily granted if a "substantial new question of patentability" is raised.

The AIA

The new statute provides two separate procedures for challenges to a granted patent. An inter partes review is available for challenges based solely upon novelty and obviousness. A post grant review is available for challenges based upon any other failure of the patent to comply with the patentability requirements of the statute. Either may be filed 9 months after the grant of a patent, or any time thereafter.

The standards for a grant of such review are, for inter partes review, if there is a "reasonable likelihood of success" presented by the request and for post grant review, the "patent is more likely than not invalid" in accordance with the statutory requirements.

Neither of the review proceedings may be filed if a challenge by the requester to the validity of the patent is already pending in a civil action. Additionally, any subsequently filed civil action containing a claim of invalidity of the patent by the requester will be stayed pending the outcome of the review. The patent owner may, subject to certain timing limitations, defeat the stay by bringing a claim of infringement in that same or separate civil action against the requester.

A review may be settled privately by the parties prior to any final decision being issued, with no limitation on the raising of the same validity challenges at a later time.

AIA special provision for business method patent review

Effective on or before Sept. 16, 2012.

A special procedure will be implemented by September 16, 2012, for an 8 year period, which provides for particular post grant review, directed solely to patents claiming methods or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, a party accused of infringement of such a patent may file for post grant review at any time during the life of the program and/or the patent, whichever is earlier. This provision further permits the accused party to request a stay of any pending civil action during the review. Additionally, the ability of the requesting

party to raise the same or other challenges to validity in future actions is slightly broader than under normal post grant review. Upon issuance of a final decision, the requester is only barred from asserting, in the future, any invalidity basis which was actually raised as part of the review.

Analysis

These review standards are intended to be more easily satisfied than the older "substantial new question of patentability." On the other hand, these review proceedings severely limit the ability of the requesting party to raise the same or other challenges to validity in future actions. Upon issuance of a final decision, the requester is barred from raising, in the future, any basis for invalidity which was or could have been raised as part of the review. The impact of this provision requires that any such request be accompanied by a thorough investigation of the patent and relevant prior art, and bringing all reasonable claims to the review.

Miscellaneous provisions

Supplemental examination

Effective Sept. 16, 2012

At any time after issuance, a patent owner may request reexamination of the patent in order to clarify positions taken or art cited in the primary examination; or to submit additional new references or information. The request will be granted if a substantial new question of patentability is raised. From a strategic standpoint, this process is available to "clean up" any lingering issues or newly discovered prior art without prejudice to the patent and limits the ability of third parties to challenge the patent as unenforceable. The process is not available to address any challenges currently pending in a civil action.

Third party citations of prior art against a pending patent application

Effective Sept. 16, 2012

The AIA broadens the time period for the filing of prior art references by a third party in a pending application from two months from publication to six months or prior to the first rejection, whichever comes first.

Joinder of parties

Effective immediately

Parties may be joined in a patent infringement action only to the extent that the claims against each arise out of the same transaction or occurrence with common questions of operative fact arising from each claim. Under prior law, any party accused of infringing the same patent could be joined to a lawsuit.

Uncooperative and unavailable inventors

Effective Sept. 16, 2012

The AIA provides a streamlined procedure for assignees to file an application with a substitute statement (in lieu of an oath) in the event that the inventor is: (i) dead; (ii) incapacitated; (iii) missing; or (iv) under an obligation to assign but refuses. A factual

showing is required, but no Director discretionary review is necessary.

Best mode disclosure requirement

Effective immediately

The patent statute, both as currently existing and under the AIA, requires that the best mode contemplated by the inventor for carrying out his invention be disclosed in the application. The Courts have identified a failure to meet this requirement as being an appropriate ground for invalidation of the patent. The AIA specifically eliminates the failure to disclose the best mode as a ground for invalidation of the patent, yet retains the underlying requirement. It remains to be seen how this dichotomy will affect the drafting of patent applications.

Patent marking

Effective immediately

Standards for marking the relevant patent number(s) on a product or in connection with a service have been relaxed. The AIA provides an alternative for compliance with the statute, providing that the patent owner may instead identify a web address instead of the patent number(s), where the relevant patents may be listed. Additionally, no penalties may be assessed for the identification of an expired patent which formerly covered the product or service.

Impact of the AIA and dual legal standards

The AIA brings sweeping changes to an already complex system for the filing, examination, grant and enforcement of United States patents. In particular, changes in the standards for patentability will require inventors and assignees to carefully monitor developments and pre-filing commercial activity. Aggressive procedures are available for post grant challenges to competitors' patents, which will enhance the need for careful prosecution of applications as well as candid communication between clients and patent counsel.

Even more challenging will be the coexistence of these two statutory schemes for the next twenty years. With some minor exceptions, all patents and applications predating the implementation of each section of the new statute will continue to be evaluated for patentability and challenged (in certain circumstances) under the older statutory scheme.

Additionally, prior to the initiation of each new statutory process, an opportunity will arise for one-time strategic decisions relating to filing patent applications, claims or other challenges under one or the other of the statutory schemes. A thorough understanding of the advantages and disadvantages of each will be required to determine the most effective course of action. ■

Barry Friedman, of Metz Lewis Brodman Must O'Keefe LLC, concentrates his practice in the area of intellectual property law and counsels clients regarding the acquisition and protection of a wide range of technological assets, including patents, trademarks, and copyrights.

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- ◆ Name and phone number of a contact person
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Thank you for your cooperation! ■

Bar Briefs

News and Notes



Edward B. Gentilcore

Edward B. Gentilcore, a Shareholder and Chair of the Construction Services Group of Sherard, German & Kelly, P.C., was recently selected by the American Bar Association's Section of Litigation to Co-Chair the group's Construction Litigation Committee.



Four local attorneys were presented with the Pennsylvania Bar Association's pro bono award at a special meeting of the Public Service Committee on January 23. The attorneys were: Christine Gale, Frank, Gale, Bails, Murcko & Pocrass P.C.; Sabrina Korbel, Civil Law Project of the Women's Center & Shelter of Greater Pittsburgh; Heidi Rai Stewart, Houston Harbaugh P.C.; and Linda Tashbook, Law Librarian, University of Pittsburgh.

People on the Move

Houston Harbaugh, P.C announces the addition of attorney Kenneth R. Miller to its Estates & Trusts practice as Of Counsel. Miller concentrates his practice in the areas of estate planning and administration, elder law, and tax law.



Strassburger McKenna Gutnick & Gefsky is pleased to announce that the following lawyers have been promoted to the position of Director with the Firm: Christopher J. Azzara; Erica L. Laughlin; Sally R. Miller; Gretchen E. Moore.



Pepper Hamilton LLP has announced that two associates, both intellectual property attorneys, have been elected to partnership in the Pittsburgh office: N. Nicole Endejann and Joseph T. Helmsen.



Megan M. Ott

Megan M. Ott of Goehring, Rutter & Boehm, has been appointed Solicitor of Leetsdale Borough. Ott represents municipalities and schools in all matters of organization, ethics, finance, assessment, code enforcement, and labor and employment litigation.



Marvin S. Lieber

Keevican Weiss Bauerle & Hirsch LLC has announced that Marvin S. Lieber has joined the firm as Member. Lieber concentrates his practice on estate planning and administration, banking, corporate law and health care matters.



Penina Lieber

Keevican Weiss Bauerle & Hirsch LLC has announced that Penina Lieber has joined the firm as a Member. Lieber concentrates her practice in the area of nonprofit and tax-exempt law.



LeeAnn A. Fulena

Robb Leonard Mulvihill LLP has appointed LeeAnn A. Fulena as a Partner. Fulena concentrates her practice in extra contractual litigation, estate planning and municipal law.



Kaylyn Boca

Leech Tishman is pleased to announce the election of Kaylyn Boca as a partner of the firm. Kaylyn practices in Leech Tishman's Real Estate and Corporate Practice Groups. She has focused her practice in the area of commercial real estate.



Goehring Rutter & Boehm has named Dana L. Bacsí and Mandi L. Scott as Partners. Bacsí is a member of the firm's Litigation Group and focuses her practice on civil litigation, including the areas of commercial, product liability, personal injury, nursing home defense, and employment law. Scott focuses her practice primarily in the area of municipal creditor rights and other municipal and local tax matters.

Change in Status

Dennis Joseph Spyra has been placed on suspension for a period of six months.



James Earl Conley, III has been disbarred retroactive to November 28, 2011.

Order your 2011 Allegheny County Bar Association Legal Directory today! Call 412-402-6614 for details.

Henry M. Sneath installed as DRI president



Henry M. Sneath

A principal shareholder at Picadio Sneath Miller & Norton, P.C., Sneath specializes in commercial and intellectual property litigation, pharmaceutical and products liability defense, and insurance coverage litigation and has tried more than 90 cases to verdict in federal and state court.

"I am honored to serve as the President of DRI," said Henry M. Sneath, DRI president. "DRI will focus on creating and enhancing new products and services to facilitate professional growth by our members. We also plan to enhance our brand, public relations, amicus curiae and advocacy efforts with increased focus and attention on the issues that matters most to our members and the defense bar."

Sneath will serve alongside President-Elect Mary Massaron Ross; First Vice President J. Michael Weston; Second Vice President John Parker Sweeney, Secretary-Treasurer Laura E. Proctor, and Past President R. Matthew Cairns as members of DRI's Executive Committee.

DRI: The Voice of the Defense Bar is an international organization of defense attorneys, business trial lawyers and corporate counsel. DRI provides members and their clients with access to education, legal resources, and numerous marketing and networking opportunities. ■

DRI: The Voice of the Defense Bar, a 22,000 member national lawyer organization, recently installed Pittsburgh trial attorney Henry M. Sneath as DRI president at the annual meeting, held in Washington, D.C. A long-time member of DRI, Sneath previously served in various DRI officer positions, as a member of the DRI Board of Directors, and Chair of the Commercial Litigation and Public Policy Committees. He speaks regularly at lawyer and business gatherings and serves as a regular commentator to the media on a wide variety of legal issues. Sneath will also be the principal spokesperson for DRI's Center for Law and Public Policy.

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